

THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF NEW YORK

MEDGRAPH, INC.,

Plaintiff,

v.

MEDTRONIC, INC.,

Defendant.

6:09-cv-06610-DGL-MWP

**DECLARATION OF WAYNE BARSKY IN SUPPORT OF
DEFENDANT MEDTRONIC, INC.'S MOTION TO COMPEL**

I, Wayne Barsky, hereby declare as follows:

1. I have personal knowledge of the matters stated herein and, if called to do so, I could and would competently testify to the facts stated below.

2. I am partner at Gibson, Dunn & Crutcher LLP and am one of the counsel of record in this case for Defendant Medtronic, Inc. ("Medtronic"). I am familiar with the prior proceedings in this case. I submit this declaration in support of Medtronic's Motion to Compel.

3. Attached as **Exhibit 1** to this declaration is a true and correct copy of the transcript of the deposition of Edward L. Schlueter, President of Plaintiff Medgraph, Inc., and one of the named inventors of U.S. Patent Nos. 5,974,124 and 6,122,351, the patents asserted in this case.

4. Attached as **Exhibit 2** to this declaration is a true and correct copy of an e-mail correspondence by my colleague Andrew J. Demko to Plaintiff's counsel on December 23, 2010.

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I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

DATED: January 10, 2011

By: /s/ Wayne Barsky
Wayne Barsky